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No. 90-510

Supreme Court, U.S.
FILED
OCT 24 1990
JOSEPH F. SPANIOL, JR.
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**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term, 1990

GERALD VICTOR BOUCHER,
Petitioner-Appellant

vs.

UNITED STATES OF AMERICA,
Respondent-Appellee

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

**APPENDIX TO
PETITION FOR WRIT OF CERTIORARI**

Stanton Bloom, Esq.
300 North Main, Suite 205
Tucson, Arizona 85701
(602) 623-5821
Attorney for
Petitioner-Appellant

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1905

WILLIAM L. DUFFY, PETITIONER,

vs.

UNITED STATES OF AMERICA,

Respondent-Appellee.

PETITION FOR WRIT OF HABEAS
CORPUS TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

APPEARED BY

WILLIAM L. DUFFY, PETITIONER.

WILLIAM L. DUFFY,
20 North Main Street,
St. Louis, Missouri.
JOHN A. DUFFY,
20 North Main Street,
St. Louis, Missouri.
WILLIAM L. DUFFY,
20 North Main Street,
St. Louis, Missouri.

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App. 17

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA.) No. 88-2160E-01
) Springfield, Missouri
Plaintiff,) November 28, 1988
) 1:30 P.M.
vs.)
)
GERALD VICTOR BOUCHER,)
)
Defendant.)

TRANSCRIPT OF DETENTION HEARING
BEFORE THE HONORABLE JAMES C. ENGLAND
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:	GREGORY K. JOHNSON, ESQ. Suite 1100 222 N. John Q. Hammons Parkway Springfield, Missouri 65806
For the Defendant:	MICHAEL DUNBAR, ESQ. P.O. Box 494 Waynesville, Missouri 65583
Court Recorder:	Sally Kollmeyer
Transcriber:	Deanna J. Miller 711 North 9th Street Kansas City, Kansas 66101 (913) 371-4116

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

Cooper - Cross (p. 20)

Q. Did you say anything to him at that time that you noticed a revolver?

A. No. Not at that time.

Q. Did you handcuff him at that time?

A. No, I did not.

Q. Did you place him under arrest at that time?

A. No, I did not.

Q. Did he cooperate with you?

A. Yes.

Q. Did he make any indication at all that he was planning to reach for a weapon to you?

A. No.

Q. At any time during -- prior to arrest or after arrest did he indicate to you that he may attempt to grab for a pistol?

A. No.

Q. Now with this pistol, was it in a holster or was it just laying out?

A. It was in a holster.

Q. Was the holster -- did it have a strap on it?

A. Yes.

Q. Was the pistol inside -- was the strap locked I guess is what I'm trying to say.

A. It was snapped.

Q. It was snapped, so you'd have to at least unsnap it

Cooper -- Cross (p. 24)

however we did not. At that point I placed him under arrest, advised him of his Miranda rights and conducted an extensive search of his person.

Q. What did you place him under arrest for?

A. Carrying a concealed weapon.

Q. Did you advise him of that?

A. Yes.

Q. At that time.

A. Yes.

Q. Okay. Did he say he understood what you'd read, the Miranda rights, did you do it from a card or is it from memory?

A. I do it from memory.

Q. Did he say if he understood?

A. Yes.

Q. Did he continue to talk to you?

A. Yes.

Q. Did he ever ask for a lawyer?

A. No.

Q. Did you handcuff him at that time?

A. Not at that time.

Q. So he's still free walking around at that time.

A. No.

Q. What's he doing?

A. He was--I think he understood that he was not free to

Cooper - Cross (p. 29)

try to obtain possession of it while -- either before or after?

A. He made no attempts to reach for the pistol.

Q. Now when you're looking in the briefcase where is he at?

A. Standing outside the passenger door to my left.

Q. So your back was to him at that point?

A. Not really my back, he was off to my side.

Q. You didn't -- still at this he's not handcuffed.

— A. Not at this point.

Q. So you don't feel that he's particularly dangerous at this point?

A. I did not consider him a threat to my safety at this point.

Q. At any time? Did you ever consider him a threat to your safety?

A. I considered him -- after I found the controlled substance I considered him more of a threat to my safety and as an escape risk.

Q. But he never tried to escape or anything like that, did he?

A. No.

Q. Did he remain cooperative throughout the whole process?

A. He was particular on which questions he would like to

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA.) No.88-3479-01-CR-S-2
Plaintiff,) Springfield, Missouri
vs.) April 3, 1989
) 10:00 A.M.
GERALD VICTOR BOUCHER,)
Defendant.)

TRANSCRIPT OF SUPPRESSION HEARING
BEFORE THE HONORABLE WILLIAM R. COLLINSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: GREG JOHNSON, ESQ.
Assistant U.S. Attorney
Suite 1100
222 N. John Q. Hammons Parkway
Springfield, Missouri 65806

For the Defendant: DEE WAMPLER, ESQ.
1200-C Woodhurst
Springfield, Missouri 65804

Court Recorder: Mark Dover
Transcriber: Deanna J. Miller
711 North 9th Street
Kansas City, Kansas 66101
(913) 371-4116

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

Cooper -- Direct (p. 3)

MICHAEL COOPER, PLAINTIFF'S WITNESS, SWORN

THE COURT: Proceed.

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. State your name for the Court please.

A. Michael Allan Cooper.

Q. Your occupation?

A. I'm a Trooper with the Missouri State Highway Patrol.

Q. And how long have you been so employed?

A. Eleven years.

Q. Let me direct your attention back to November the 14th of last year. Were you on duty on that date?

A. Yes.

Q. And where was your area of responsibility?

A. LaClede County, Missouri.

Q. Directing your attention to the late afternoon, around 5:00, did you have an occasion to stop a vehicle?

A. Yes.

Q. Okay. Would you tell the Court what occurred prior to the stop of this vehicle?

A. I was on routine patrol, westbound on I-44 in Laclede County, near the 140 mile marker. I observed an east-bound 1979 brown Chevrolet Scottsdale pickup truck with a camper shell. The vehicle appeared to be exceeding the state speed limit.

Cooper -- Direct (p. 4)

Q. Okay. Now you say "appeared to be exceeding the speed limit". Did you have some kind of a reference that you were using to make this judgment?

A. Yes.

Q. What was that, sir?

A. My experience as a Trooper with my eyesight, also my radar unit which was in my patrol car.

Q. Now, did you observe this car passing or gaining on other cars or do you recall?

A. I don't recall.

Q. Okay. Did you utilize your radar on that date?

A. Yes.

Q. Okay. And did your radar give you a reading of the speed of this vehicle?

A. Yes, it did.

Q. And what did your radar show?

A. Seventy-two miles per hour.

Q. What did you do next?

A. I activated my red lights, crossed the median and stopped the pickup truck.

Q. Okay. Now this stop occurred in Laclede County?

A. Yes, sir.

Q. In the Western District of Missouri, is that correct?

A. Yes, sir.

Q. Okay. Let me hand you what's been marked Government's

Cooper -- Direct (p. 6)

A. Yes, sir.

Q. And have conversation with the driver?

A. Yes, sir.

Q. Okay. Did you ask for the driver's license?

A. Yes, sir.

Q. And what happened?

A. He produced his driver's license.

Q. Okay. What state was the license from?

A. The State of Arizona.

Q. Okay. And was there a name on that license?

A. Yes.

Q. And what was that name, sir?

A. Gerald Victor Boucher.

Q. The Arizona driver's license, is that correct?

A. Yes.

Q. Had you noticed the tags or the license plate on the vehicle?

A. Yes.

Q. Okay. Was it also from Arizona?

A. No.

Q. Okay. And what state was it from?

A. The State of Nevada.

Q. Did you ask for any identification from the driver concerning the vehicle?

A. Yes.

Cooper -- Direct (p. 8)

A. After he got out and shut the door, he started back to the rear of the vehicle.

Q. And did you take any precautions at this time for your own safety?

A. Not at this time. I did a few minutes later.

Q. Okay. What did you do a few minutes later in this regard, sir?

A. A few minutes later I patted him down before I placed him in the patrol car.

Q. Okay. Now, this pat down was a weapon search, is that correct?

A. Yes.

Q. Did he have any weapons on him?

A. Not that I found.

Q. Now when Mr. Boucher exited the vehicle, did you notice anything unusual?

A. Yes.

Q. Okay. What did you observe?

A. After I shut the door, I looked in the window and saw the butt of what appeared to be a handgun sticking out of the crack of the seat underneath where he had been sitting.

Q. Okay. Did you remove the gun at this time?

A. No.

Q. Okay. After Mr. Boucher was placed in your vehicle, did you issue him a ticket?

Cooper -- Direct (p. 10)

Q. Okay. At this time was the defendant cooperative with you?

A. Yes.

Q. Okay. After having written the ticket and gotten these responses from him, did you place the defendant under arrest?

A. Yes, I did.

Q. And tell the court what you did, sir.

A. Initially I asked him to step out of the car. Backing up a little bit, I asked him for permission to search his vehicle which he granted consent and then we got out of the patrol car and when he got around to the front of the vehicle he thought he was going on up to the truck, but I stopped him and placed him on the front of the patrol car with his hands and legs outspread and conducted a thorough search of him, placed him under arrest and advised him of his Miranda rights.

Q. Now, did you do this from card or from memory?

A. From memory.

Q. Okay. Did he indicate that he understood his Miranda rights?

A. Yes.

Q. Did he make any statements to you at that time about refusing to talk to you?

A. No.

Q. Or wanting a lawyer before he would talk to you?

A. No.

Q. Now, you've indicated you asked for permission to search

Cooper -- Direct (p. 11)

his vehicle?

A. Yes.

Q. And he gave you that permission?

A. Yes.

Q. Now, this was a verbal request?

A. Yes.

Q. At what point did you make this request to search?

A. After I had already observed the weapon in the vehicle and after he had already denied having any weapons in the vehicle, even though I knew to the contrary, I asked him for permission to search the vehicle.

Q. Did he offer to help you or anything?

A. Yes.

Q. What did he say?

A. He said, I'll help you set stuff out, if you want.

Q. Okay. Now, did you conduct a search of the cab of this '79 pickup?

A. Yes, sir.

Q. You searched there first?

A. Yes.

Q. And were you able to locate a weapon at that time?

A. Yes. First I went to the driver's door, opened the driver's door and pulled the weapon that I had originally seen -- pulled it from the crack in the seat and unloaded the weapon.

Cooper - Direct (p. 12)

Q. Let me hand you what's been marked Government's Exhibit #3. First let me ask you if that is a pistol, right?

A. Yes. It's a revolver.

Q. And has that gun been unloaded?

A. Yes, it has been. It's unloaded now.

Q. And the cylinder is open?

A. The cylinder is open.

Q. So the gun cannot fire.

A. That is correct.

Q. Okay. Would you describe first of all what kind of weapon that is?

A. This is a Smith and Wesson Model 34-1, .22 caliber revolver.

Q. Okay. Where did you find that particular weapon?

A. This is the gun that I found in the crack of the seat underneath where Mr. Boucher was sitting, although it was not in this exact condition.

Q. Okay. Was it in a holster?

A. Yes.

Q. Was it loaded?

A. Yes.

Q. Okay. How many rounds were in the chamber?

A. Six.

Q. Okay. How many rounds did the chamber hold?

A. Six.

Cooper -Direct (p. 14)

Q. And what did you say to him?

A. After he told me that he was a private investigator, and although I knew that he already had a gun, although he was denying the fact that he had a gun, I told him that I had never met a private investigator who didn't carry a gun.

Q. Okay.

A. And he told me that he's only licensed as a private investigator in the State of Arizona and he's not licensed for Missouri, and for that reason, he doesn't carry a gun in Missouri.

Q. Okay. Now, did you conduct a further search of the cab of the truck?

A. Yes.

Q. Were you able to locate another weapon?

A. Yes.

Q. Where did you locate this next weapon?

A. In an unlocked briefcase on the passenger floorboard.

Q. Okay. We're talking about a briefcase, is that correct?

A. That is correct.

Q. And the briefcase is on the floor of the cab of the truck?

A. Yes.

Q. On the passenger side.

A. Yes.

Q. And was unlocked?

A. Yes.

Cooper -- Direct (p. 15)

Q. Let me hand you what's been marked as Government's Exhibit #4, and can you identify this for me please?

A. This weapon is unloaded. This is a Walther PPKS .380 caliber pistol. This is the same pistol that I found in the briefcase, although it's not in the condition in which I found it.

Q. Okay. Now, when you found this gun, was it in a holster?

A. Yes.

Q. Was the gun loaded?

A. Yes.

Q. How many rounds did you remove from this weapon?

A. Six rounds, five in the magazine and one in the chamber.

Q. Can you describe the kind of bullets that were in this gun?

A. Yes.

Q. What kind were they, sir?

A. They were hollowpoint--silver tip hollowpoint bullets.

Q. Now, this particular gun has a safety on it, is that correct?

A. That is correct.

Q. And when the safety is engaged can this gun be fired?

A. No.

Q. When the safety is engaged, can this gun be cocked?

A. No.

Q. What was the condition of this gun when you found it?

A. When I found the gun, there was a round in the chamber,

Cooper -- Cross (p. 30)

A. Yes.

Q. Did you use the drug courier profile in this case?

A. No.

Q. Do you know what interference that you got on your radar machine when you tried to shoot this vehicle?

A. Yes.

Q. What was the interference?

A. The interference, in my opinion and from my experience, was probably caused by the overpass that was directly in front of me causing the radar unit to blank out or not function.

Q. Now, as far as locking in the speeding of 72 in a 65 mile zone, did you lock it into your machine?

A. No, I did not.

Q. And as a result, you never showed it to the person who was being ticketed, Mr. Boucher?

A. No, I did not.

Q. Isn't that normal, that you lock it into your machine and then have it registered there so that the person can see it if he disputes it?

A. No, that's not normal.

Q. Is it normal that you unlock it then so that it disappears from the screen?

A. No, that's not normal either.

Q. So why was it that it wasn't locked in in this case?

A. It just was never locked in. The speed was decreasing

Cooper -- Cross (p. 32)

Q. Now, do you admit that it is possible that sometimes there are typographical errors on either driver's license or registration forms?

A. Yes, that's possible.

Q. And incidentally, Trooper, you didn't save or preserve his operator's license that you took from him at the scene, is that right?

A. That's correct.

Q. So what we have on that issue, again, is your word that there was a discrepancy in the names on the car registration and the driver's license, is that right?

A. I do have a computer printout of his driver's license showing that the spelling was B-O-C-H-E-R.

Q. Right. Which you've understood since then is his true name?

A. No, it is not his true name.

Q. You said B-O-U-C-H-E-R.

A. If I said B-O-U-C-H-E-R I meant to say B-O-C-H-E-R.

Q. Well, do you have that computer printout with you?

A. It's in my papers that are in the courtroom.

Q. The one item that you identified, I think as an exhibit, this morning is the Nevada vehicle registration and it shows B-O-U-C-H-E-R, does it not?

A. Yes, it does.

Q. Incidentally, he wasn't wanted for anything.

Cooper -- Cross (p. 33)

A. Not to my knowledge.

Q. Well, you checked it through NCIC, so you have their knowledge, don't you?

A. He wasn't entered in NCIC.

Q. He wasn't entered?

A. He was not entered in NCIC.

Q. Okay. Well, you checked with NCIC to see if he was entered, did you not.

A. Yes.

Q. Okay. That's what I'm after. It's more than just your testimony here. We have every computer in the country that hooks into NCIC, do we not, every law enforcement computer?

A. My experience is that frequently people are wanted and not entered into NCIC.

Q. All right. At any rate, the benefit of the knowledge from the National Crime Information Center was that he was not wanted and you did not get any hits on him in the NCIC.

A. That is correct.

Q. And incidentally, that has access to the Department of Revenue, and there were no hits on him there either.

A. That's correct.

Q. So as far as him being a wanted person or a dangerous person or any thing like that, you didn't have any information along that line to trouble you at that point that he was a wanted person.

Cooper -- Cross (p. 34)

A. That's correct.

Q. Incidentally, do the computers also indicate whether a person has ever caused trouble with a Highway Patrolman or a Police Officer before?

A. Missouri-- If they are from Missouri, and have had problems in Missouri and been known to resist arrest or are known to be a dangerous felon in Missouri, there is a caution indicator that we are told about.

Q. Okay. There's a certain number that's kind of a secret number for you guys that tells you whether a person has ever swung at a State Trooper before, for instance?

A. Only in the State of Missouri, yes.

Q. Right. And you didn't get any caution indicators on him?

A. No.

Q. You said the next thing that bothered you was that he had an Arizona driver's license with Nevada tags, is that right?

A. Yes.

Q. Do you know of any statute anywhere in the country that makes that illegal, to own a car in one state and be licensed to drive in another?

A. Yes.

Q. Where is such a statute?

A. In Missouri.

Q. That is you're saying it's against the law, you believe, to have a Missouri driver's license and have a car registered

Cooper -- Cross (p. 37)

Q. All right. It's your understanding when you take a person to jail and give them a chance to make a bond, it's your opinion that is not an arrest, is that right? Is that what you're testifying to?

A. That is my opinion, and also, people that we issue traffic tickets to are usually allowed to drive in on their own, under their own free will, to drive straight to the Sheriff's Office to take care of their traffic tickets.

Q. But that is a command that you give them, even if it's a courtesy to drive their car, it's a command that you tell them to do.

A. Yes.

Q. And you restrain their liberty by doing so, is that right?

A. Yes.

Q. And if they don't do so, then you arrest them for another crime, for failing to obey a reasonable request of a Highway Patrolman.

A. That's correct.

Q. Now, you say that as soon as he stepped out of the car you saw a gun, is that right?

A. After the door was shut, yes.

Q. And it was in clear view.

A. Yes.

Q. And there was no question about it, that it was a gun?

A. That's correct.

Cooper -- Cross (p. 38)

Q. And you've seen many guns before, probably thousands.

A. Many guns.

Q. And it was in clear plain view and nothing obstructed your view.

A. That's correct.

Q. And it was your intent at that time, however, to arrest him for carrying the concealed weapon?

A. Yes.

Q. Even though the gun wasn't concealed?

A. It had been concealed up to that time, that's the reason.

Q. It was merely concealed because of the fact that you didn't see it, is that right?

A. That's correct.

Q. But the gun itself wasn't concealed because you saw it once he got out of the vehicle.

A. Yes.

Q. Now, the gun was on the seat, wasn't it?

A. It was in the seat.

Q. In the seat? You will recall talking the next day with the ATF Agent, Tom Miller, do you not?

A. Yes.

Q. And did you know that he filed a sworn criminal complaint with this Court?

A. Yes.

Q. For the issuance of an arrest warrant against my client?

Cooper -- Cross (p. 40)

your mind?

A. Yes.

Q. And presumably he took notes while he was talking with you on the phone?

A. I have no knowledge that he took any notes.

Q. Well, did you ever correct this with the Court or correct it with him and tell him that he signed a false statement here?

A. No.

Q. Actually the gun wasn't concealed but for the fact that the defendant just happened to be sitting there, isn't that right? You say you couldn't see through his leg or through his body?

A. That's correct. It wasn't readily visible.

Q. I mean if I had these glasses sticking here in my pocket in clear view but happened to turn a certain way, in your opinion I'm carrying concealed glasses, is that right, if you can't see them?

A. That's correct, if it's not readily visible, it's concealed.

Q. You were looking for a pretext, were you not, to arrest this man so that you could explore and search his truck?

A. No.

Q. You intended to arrest him again -- I'm saying you already arrested him once, but you certainly intended to arrest him for a second reason, for carrying a concealed weapon, did you not?

Cooper -- Cross (p. 41)

A. Yes, after I saw the concealed weapon.

Q. And it was in your mind at that time immediately when you saw it as he stepped out of his truck, to make an arrest on him for carrying a concealed weapon.

A. Yes.

Q. In violation of Missouri law.

A. Yes.

Q. And in fact before he got into your patrol car, which you commanded him to do, you patted him down, did you not?

A. Yes.

Q. Did you tell him to halt or wait, stop, or words to that effect?

A. Yes.

Q. Did you tell him to raise his arms so that you could check under his arms?

A. I don't recall specifically what I told him.

Q. He raised his arms though, didn't he, a little, so that you could search under his arms?

A. I don't recall.

Q. At any rate, you commanded him to stop so that you could pat him down.

A. I didn't command him but he did stop and I did conduct a loose patdown search of him.

Q. And, again, had he resisted you in the slightest, you would have arrested him again probably for interfering with

Cooper -- Cross (p. 42)

the reasonable request of a Highway Patrolman?

A. Yes, I would have.

Q. Which, again, is a Missouri law, state law?

A. Yes.

Q. Now, when you got him in your vehicle, your patrol car, you at that point intended to be sure to take him into custody as soon as -- well, from that point on, did you not?

A. I had in my mind that I was going to place him under arrest.

Q. And notwithstanding the two things you had on him, which was speeding and he as an out of state driver and you were going to take him in, and carrying a concealed weapon, notwithstanding those two things, you didn't advise him of his constitutional rights.

A. That's correct.

Q. He was not Mirandized at that point.

A. Not at that point.

Q. And you continued to question him in the car, is that right, in your patrol car?

A. Yes.

Q. And, I believe, at your deposition earlier on January 31st of 1989, in Lebanon, Missouri, you testified that's what you call back door interrogation, is that right?

A. Yes.

Q. And this is a peculiar type of police work that you do

Cooper -- Cross (p. 48)

then cut into it?

A. Yes.

Q. And you looked in the glovebox?

A. Yes.

Q. And you opened up an aspirin container and a film container?

A. That came later in the investigation but I did not open the film container.

Q. All right. Now, my point I'm trying to make here is you never did ask him, Mr. Boucher, or whatever your name is, do you mind if I search your truck and open up the containers that are contained within that truck, did you?

THE COURT: He didn't ask him that. You didn't ask him that obviously.

THE WITNESS: That's right. Mr. Wampler, was that question directed to me?

MR. WAMPLER: Well, yes, it was.

THE COURT: It's just repetition, complete repetition.

Q. Did you ever get a Miranda rights waiver from this defendant?

A. No.

Q. You know what those are and you have those in your patrol car, do you not?

A. Yes.

Q. You never did ask him, did you not, for permission to talk

Cooper -- Cross (p. 50)

this for this afternoon. I've got a sentencing set this morning that has to be done.

MR. WAMPLER: At what time, Your Honor?

THE COURT: At 11:00 and it's 11:00 right now. I've got a sentencing set and we're going to have to take it up as soon as they get the file up here. They've lost the file.

BY MR. WAMPLER:

Q. The man was a private investigator, was he not?

A. He told me that he was and he showed me a document indicating that he was.

Q. Let me hand you Exhibit #4 which appears to be an identification card of a private investigator. Is that the type of card that he showed you that had his photograph on it and a number from the State of Arizona?

A. He showed me some document indicating that he was a private investigator but I don't recall exactly what the document was or what it looked like.

MR. WAMPLER: I'm offering, Your Honor, Exhibits #3 and #4 into evidence, Defendant's Exhibits #3 and #4.

THE COURT: What's #3?

MR. WAMPLER: Three is the affidavit of Tom Miller, he's the ATF Agent, and #4 is the private investigator's card.

MR. JOHNSON: May I make a brief inquiry of the witness? This affidavit of Tom Miller, did you read this before he signed it?

Cooper -- Redirect (p. 52)

weapon was on the seat of the vehicle, is that right? The gun was in fact on the seat of the vehicle, was it not?

A. It could be construed to be on the seat or in the seat or in the crack of the seat which I think would be correct terminology.

Q. Was the gun touching the front seat of the vehicle?

A. Yes.

Q. And it was simply pushed back on the front seat and partially hidden by the top of the seat coming down.

A. That is correct.

Q. So the statement really isn't incorrect at all?

A. That's correct.

Q. And when you first asked the defendant to exit the vehicle, the gun was not in plain view.

A. That is correct, it was not.

Q. It was hidden by his body and partially hidden by being wedged down on the front seat under part of the front seat coming down and hidden from view, is that correct?

A. That's correct.

MR. JOHNSON: No more questions.

THE COURT: You may step down.

THE WITNESS: Thank you, sir.

MR. JOHNSON: May this witness be excused, Your Honor?

THE COURT: He may. Any other evidence?

MR. JOHNSON: The Government has one witness which I

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA.) No.88-3479-01-CR-S-2
Plaintiff,) Springfield, Missouri
vs.) April 20, 1989
) 2:30 P.M.
GERALD VICTOR BOUCHER,)
Defendant.)

TRANSCRIPT OF HEARING ON MOTION TO SUPPRESS
BEFORE THE HONORABLE WILLIAM R. COLLINSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: GREGORY K. JOHNSON, ESQ.
Suite 1100
222 N. John Q. Hammons Parkway
Springfield, Missouri 65806

For the Defendant: DEE WAMPLER, ESQ.
1200-C Woodhurst
Springfield, Missouri 65804

Court Recorder: Janis J. McBurney
Transcriber: Deanna J. Miller
711 North 9th Street
Kansas City, Kansas 66101
(913) 371-4116

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

Cooper -- Court examination (p. 3)

questions.

MR. JOHNSON: Would you like to have him sworn in again, sir?

THE COURT: Yes.

MICHAEL A. COOPER, WITNESS, SWORN
EXAMINATION BY THE COURT

Q. Now, Trooper, you testified before in this matter so I want to ask you about that camper shell. The only way you can get into it is through the back of it? Is there a door in the back of it or something?

A. Yes, sir, there is.

Q. Something was said about opening the tailgate, is that --

A. Yes.

Q. You have to open the tailgate to get into it, is that right?

A. That's correct, the door must be open and the tailgate must be lowered before you can enter the back of it.

Q. And does it have windows in it?

A. Yes, sir, it does.

Q. On both sides?

A. Yes, sir.

Q. All right. Now describe to me what they call a bedliner.

A. The bedliner is a piece of rubberized manmade material approximately three-quarters of an inch thick that lays in the bottom of a pickup truck bed. In this particular case the

Cooper -- Court examination (p. 5)

Honor.

Q. Bales. Bales. One of those bales were introduced into evidence. Were they all about the same size as that?

A. Yes, sir, they were fairly uniform in shape.

Q. They were almost square weren't they? I mean about as thick as they were wide or do you remember?

A. Yes, sir, I do remember. No, they weren't actually square. They weren't cube shaped. They were more of a rectangular shape.

Q. About the --

A. With rounded corners.

Q. Were they lined up in a row under there when you discovered them?

A. Yes, they were. They were lined up. All four of the bales were lined up in a row up against the front of the cab and they were all approximately the same height.

Q. And you had to lift the bedliner to actually see theme, is that right?

A. That is correct.

Q. But it was very apparent looking in the windows that there was something under there?

A. Yes, the bedliner wasn't laying flat on the floor like it was designed to.

Q. Very well.

THE COURT: Are there any other questions? Mr.

Cooper -- Cross (p. 10)

aside?

A. That is not correct.

Q. Were you able to do it without doing that?

A. Yes.

Q. Okay. And you lifted it up, I guess, in a motion of some kind where you pulled it with your hand?

A. Yes, pulled it toward myself.

Q. And then you found a wrapped package or bale of some kind, is that right?

A. Yes.

Q. And then did you cut into it?

A. Yes.

Q. You used a pocket knife of some kind, is that right?

A. Yes.

Q. It is true, is it not, Trooper Cooper, that from the time that you intended to ticket him or question him about improper registration or improper license, it is true that you intended at that time to investigate further to see if you could find any law violations of any kind or nature?

A. I don't believe I understand your question. Could you repeat it for me, please?

Q. Let me ask you if you were asked this question before and gave this answer at your deposition January --

MR. JOHNSON: If it please the Court, Your Honor, there is no basis for any attempt to impeach. This witness has

Cooper -- Cross (p. 11)

not denied or admitted making any statements one way or the other. He's asking questions he doesn't understand.

MR. WAMPLER: Well, it's the same question he's been asked before, Your Honor, and he gave an answer is why I'm --

THE COURT: Go ahead. Go ahead.

BY MR. WAMPLER:

Q. Were you asked this question: "Well, were you intending on investigating further to write him a ticket for improper registration or improper license, driver's license", question mark; and your answer was: "My intentions for investigating further were to uncover any other facts that I might find, any other law violations such as stolen motor vehicles or anything else that might be there. He says he lived in Nevada but he said that the vehicle was his but he showed to be living in Arizona according to his driver's license." And you go ahead to say: "I wanted him to produce documentation on his vehicle." Is that the answer you gave?

A. Apparently it is.

Q. And would it be correct to say that from the time that you asked him to step out of the vehicle and where you say you saw a gun in or on the front seat, that you did intend to arrest him for that alleged violation, is that right?

A. Yes.

MR. WAMPLER: May I have just a moment, Your Honor?

THE COURT: Proceed.

Cooper -- Cross (p. 14)

or two points?

THE COURT: You certainly may.

MR. JOHNSON: Thank you, sir.

CROSS EXAMINATION

BY MR. JOHNSON:

Q. Am I correct after you stopped the vehicle you asked Mr. Boucher to exit the vehicle and go back and sit in the patrol car, is that correct?

A. That is correct.

Q. And in the patrol car you wrote him a uniform citation for speeding?

A. That is correct.

Q. While sitting there did you ask him if there was any drugs, money, or guns in the truck?

A. Yes, I did.

Q. What did he say?

A. He answered no to all three questions.

Q. When he said no, what did you say?

A. I said then do you mind if I take a look in your truck?

Q. And you said do you mind if I take a look. What did he say?

A. He said, no, I don't mind. I'll even help you set stuff out if you want.

Q. Then from your understanding of the situation it was clear to him when you said may I take a look in the truck it means that you're going to go physically into the truck and look

Cooper -- Cross (p. 16)

A. Yes.

Q. At anytime prior to your looking under the bedliner and finding the marijuana, did he object to your searching any further?

A. No.

MR. JOHNSON: Thank you.

THE COURT: Anything else, Dee?

MR. WAMPLER: Just a few questions, Your Honor.

CROSS EXAMINATION

BY MR. WAMPLER:

Q. Trooper Cooper, at that point it wouldn't have made any difference whether he would have objected or not, you still intended to go ahead and search, did you not?

A. That is correct. I would have continued to search.

Q. You were the man in the uniform with the loaded service revolver on your hip and you were in command completely and fully were you not?

A. Yes, I was.

Q. And in fact had he come up to you and said wait a minute I gave you permit to look, but not to search, that would have probably added to your probable cause at the time to go ahead and search even more diligently?

A. My search was a probable cause search from the very beginning, and had he objected to my search I would have continued the search based on probable cause for the weapons

Cooper -- Cross (p. 17)

I had already found.

Q. It was a probable cause search to look for violations of any laws that you might find, is that right, pursuant to the answer that I asked you about earlier?

A. I was searching for more weapons at that point.

Q. Well, --

A. I didn't expect to find drugs.

Q. Trooper, without going over all of your testimony before, and I think you've testified four times now at the Grand Jury, at a deposition, at the hearing to decide whether a bond should be set or not, and then at this motion to suppress, you have never ever testified before that your search was a protective search have you?

A. No, it was not a protective search. It was a probable cause search.

MR. WAMPLER: Thank you.

CROSS EXAMINATION

BY MR. JOHNSON:

Q. All right. Were you conducting a search believing you had consent from Mr. Boucher?

A. That was not the sole basis --

Q. Not the sole basis, I understand that. But were you searching from the belief that he had given you consent to search?

A. Yes.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA.) No.88-3479-01-CR-S-2
Plaintiff,) Springfield, Missouri
vs.) May 8, 1989
) 9:46 A.M.
GERALD VICTOR BOUCHER,)
Defendant.)

TRANSCRIPT OF CHANGE OF PLEA
BEFORE THE HONORABLE WILLIAM R. COLLINSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: GREGORY K. JOHNSON, ESQ.
Suite 1100
222 N. John Q. Hammons Parkway
Springfield, Missouri 65806

For the Defendant: DEE WAMPLER, ESQ.
1200-C Woodhurst
Springfield, Missouri 65804

Court Recorder: Sally Kollmeyer
Transcriber: Deanna J. Miller
711 North 9th Street
Kansas City, Kansas 66101
(913) 371-4116

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transcript produced by transcription service.

Change of Plea (p. 7)

a felony prosecutable in courts in the United States, all in violation of Title 18, United States Code, Section 924(c). I might add, Your Honor, that under the plea agreement setting for the natural basis, the language of the indictment is modified to the understanding of this defendant, that used during drug trafficking offense means that the gun was available during the drug trafficking offense. In other words, what the indictment is really charging in this case and Mr. Boucher's understanding is that he was in fact possessing with the intent to distribute marijuana, that he did have the gun, that the guns were available.

THE COURT: How do you mean? You're changing the indictment?

MR. JOHNSON: No, sir, I'm just making that clarification because they have brought this up to us several times. I'm troubled by the word "used" in the indictment and I anticipate that that was about to be brought up again and I would explain that that's the factual basis of the plea agreement, but I'm not changing the indictment, no sir, it follows the language of the statute.

THE COURT: Mr. Boucher, you've heard -- what's the maximum on that -- minimum I mean, minimum?

MR. JOHNSON: That one is a mandatory consecutive five year sentence to Count 1. There is no minimum mandatory, it's simply a five year sentence consecutive.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.)
GERALD V. BOUCHER)
Defendant.)

TESTIMONY OF MR. MICHAEL ALLEN COOPER

Be It Remembered that on this 28th day of November, 1988, the testimony of Mr. Michael Allen Cooper was taken before the Special Federal Grand Jury, impaneled on August 10, 1987, by the Honorable Russell G. Clark, Judge of Division 4.

Present in the grand jury room with the Special Federal Grand Jury were:

MR. GREGORY K. JOHNSON
Assistant U.S. Attorney
1100 U.S. Courthouse
22 North Hammons Parkway
Springfield, Missouri 65806

CONNIE J. GRIFFEE, RPR,
CSR, CCR, Notary Public
Springfield, Missouri

ALPHA REPORTING SERVICE
1948-C South Glenstone
Springfield, Missouri 65804
(417) 887-4110

(p. 6)

Q. Okay. Kind of slid under his leg, under the wallet area?

A. No. The butt was sticking out of the crack in the seat. The crack is similar to a regular car seat, and the gun was just shoved right down in the crack, with about 3 or 4 inches of the gun sticking out of the crack, the handle portion.

Q. What kind of a gun was that?

A. It was a Smith & Wesson Model 34-1 .22 caliber revolver. It was loaded.

Q. You say it was loaded?

A. Yes, sir.

Q. Did it have any particular kind of shells in that gun?

A. Yes. It had hollow-point bullets.

Q. Would you explain what a hollow-point bullet is?

A. A hollow-point bullet, looking at the bullet from the end, it has an indentation in the end of it, a little hole. And upon the firing of the weapon, when it strikes an object, the bullet expands much greater than a regular solid-core bullet does.

Q. Makes a bigger wound; is that right?

A. Yes, sir, that's correct.

Q. Enhances the chances of taking somebody down?

A. Yes, sir.

Q. Did you make a further search for weapons?

**REPORT OF
TROOPER MICHAEL A. COOPER**

(November 14, 1988)

Reporting Officer:	Michael A. Cooper, Trooper
Badge:	223
State Control No.:	88321005000
Date of Report:	11-14-1988
Charge or Type of Investigation:	Possession of Marijuana
Date Occurred:	November 14, 1988 1710 Hours
County:	Laclede

NARRATIVE

1. At about 5:10 p.m., on November 14, 1988, I checked a brown 1979 Chevrolet pickup with a camper shell at seventy-two miles per hour, by moving radar, on east-bound I-44 at the 140 Mile Marker in Laclede County. When I stopped the vehicle, the driver produced an Arizona driver's license identifying him as Gerald Victor Bocher, age 55, and he said the truck belonged to him. When I questioned him about the Nevada license plates on the truck, he produced a Nevada registration showing the owner as Gerald Victor Boucher of Las Vegas, Nevada. He also said he was a licensed private investigator and his office was in Las Vegas, Nevada.

2. I asked him to come back to the Patrol car, and after he got out and shut the door, I saw the handle of a small revolver sticking out of the crack of the seat under where he had been sitting. I did not tell him I saw the weapon, and I patted him down and put him in the Patrol car. While I wrote him a speeding ticket, he told me he was on his way to Detroit, Michigan to visit relatives.

I asked him if he had any weapons, drugs, or large quantities of cash in the vehicle, and he said no. He gave me consent to search the vehicle, and offered to help me remove items from the truck and assist in searching.

3. When we got out of the Patrol car, I thoroughly searched him and found \$550.00 in his pants' pockets. I told him I saw the gun on the driver's seat and I advised him of his rights, according to the Miranda Decision. He said he understood and said he had no more weapons in the vehicle. I seized the gun from the driver's seat. It was a loaded Smith and Wesson, Model 34-1, .22 caliber revolver in a holster. In an unlocked briefcase on the passenger floorboard, I found a loaded stainless steel Walther PPK .380 caliber pistol in a holster. A round was in the chamber and the hammer was cocked. I also found a purple cloth bag in the briefcase containing twenty-nine one dollar bills. Boucher still claimed he had no more money or weapons in the vehicle. From looking in the side windows and back door of the camper shell, I could see the rubber bed liner on the floor of the truck bed was raised up about a foot near the front of the bed. On top of this raised area was a blanket and a spare tire. I asked him what the raised area was and he said it was a bunk for sleeping on. Upon opening the locked door of the camper and lowering the tailgate, I saw what appeared to be instant coffee granules scattered on the floor of the bed. In an oil box near the tailgate, I found an open jar of instant coffee granules, an aerosol can of air freshener and a bottle of ammonia. At the front of the bed, I pulled the bed liner up and under it was four rounded bundles wrapped in white trash bags. I cut open one bale and found it contained [sic] compressed marijuana. During a search of a blue handbag, I found a

small "Bayer" aspirin tin containing five one hundred dollar bills.

4. I followed Morgon's Towing wrecker as it removed the truck to the Highway Patrol Zone Office in Lebanon, Missouri. The four bales of marijuana were examined in the Zone Office. Each compressed bale was then placed in a white trash bag, was covered with coffee grounds and a sticky white, powdery substance, and the bag was sealed with tape. Each bale was then placed in a second white trash bag and covered with coffee grounds, a white powder, and the second bag was also sealed with tape. The total weight of the marijuana was approximately seventy-seven pounds.

5. Patrol Canine "Wiko", handled by Trooper D. A. Hensen, aided in a search of the vehicle and contents and found a film canister containing marijuana in a side pocket of the blue handbag mentioned earlier. Nothing else of evidentiary [sic] value was found in the vehicle.

6. Boucher remained cooperative during the processing, but refused to answer any questions about the marijuana or his destination. He admitted he owned both handguns and carried them for personal protection.

7. After processing, he was incarcerated in Laclede County Jail. His vehicle will be held for forfeiture at the Highway Patrol Zone Office at the request of the Laclede County Assistant Prosecuting Attorney Greg Kays. The currency found on Boucher and in the vehicle was also held for forfeiture.

8. On November 15, 1988, Laclede County Warrant Number CR488-1195F was issued charging Gerald V. Boucher with possession of marijuana. Bond was set at \$50,000.00. Warrant Number CR488-1196F was also issued charging him with unlawful use of weapon. Bond was set at \$25,000.00.

9. Also on November 15, 1988, a Federal warrant was issued charging Boucher with:

- a. Count One - Possession of marijuana with intent to distribute; and
- b. Count Two - Use of a firearm in commission of Count One.

No bond was set.

M.A. Cooper, Trooper

MAC:jsk
enc.

cc: GHQ - Troop I file - Troop I, D/DCC - Reporting Officer - Zone V file - Laclede County Prosecuting [sic] Attorney - U.S. Attorney Greg Johnson, Federal Courthouse, Springfield, MO 65801 - ATF AGent [sic] Tom Miller, Drug Task Force, Federal Building, Springfield, MO 65802.

**571.030. Unlawful use of weapons - exceptions -
penalties**

1. A person commits the crime of unlawful use of weapons if he knowingly:

(1) Carries concealed upon or about his person a knife, a firearm, a blackjack or any other weapon readily capable of lethal use; or

3. Subdivisions (1), (5) and (8) of subsection 1 of this section do not apply when the actor is transporting such weapons in a nonfunctioning state or in an unloaded state when ammunition is not readily accessible or when such weapons are not readily accessible. Subdivision (1) of subsection 1 of this section does not apply when the actor is also in possession of an exposed firearm or projectile weapon for the lawful pursuit of game, or is in his dwelling unit or upon business premises over which the actor has possession, authority or control, or is traveling in a continuous journey peaceably through this state.

UNIFORM COMPLAINT & SUMMONS

MOMHP0000 - MISSOURI HIGHWAY PATROL 860560360
STATE OF MISSOURI IN CIRCUIT COURT OF J. MOORE
LACLEDE COUNTY ACCA DIVISION

UNDERSIGNED POLICE OFFICER STATES THAT
on or about... 11-14-88, [at] I-44 at 140 MM (EB)
[at] 5:10 p.m.

WITHIN COUNTY AND STATE AFORESAID

Name: Bocher, Gerald Victor
Address: P.O. Box 32422
Tucson, AZ 85705
DOB: 07-31-33
Age: 55 Race: W Sex: M
Height: 5-10 Wght: 260
Dr Lic. No.: A002184 State: AZ
Employer: Self

DID UNLAWFULLY OPERATE -

Year/Make: 79 Chev Mdl: C-10
Style: PK Clr: Bro
License No: 014-CSG St: NV
Year: 89

DID THEN AND THERE COMMIT THE FOLLOWING
OFFENSE TO WIT

Exceeded Day Speed Limit -- 72 MPH on I-44
Driving 72 mph when limited to 65 mph.

App. 60

Detection Method: Moving radar 54

In Violation of: RSMo. 304.010
4701205N

THE ABOVE COMPLAINT IS TRUE AS I VERILY
BELIEVE.

Officer: /s/ M.C. Cooper
Badge: 223

Court Date: Bond 12/14/88

3-10-89 @ 9. State enters nolle prosequi.

Certificate of true copy
October 4, 1989
by /s/ J.D. Hardesty

IN THE ASSOCIATE CIRCUIT COURT
OF LACLEDE COUNTY, MISSOURI

STATE OF MISSOURI,)
Plaintiff,)
vs.) File No. CR488-1196F
GERALD VICTOR BOUCHER,)
Defendant.)

COMPLAINT

STATE OF MISSOURI)
COUNTY OF) ss.

GREG KAYS, of lawful age, being first duly sworn, deposes and states that Gerald Victor Boucher, on or about the 14th day of November, 1988, at the County of Laclede and State of Missouri:

Count 1: in violation of Section 571.030, RSMo, committed the class D felony of carrying a concealed weapon, punishable upon conviction under Section 558.011.1(4), RSMo in that on or about the 14th day of November, 1988, in the County of Laclede, State of Missouri, the defendant carried concealed upon or about his person and within easy reach and convenient control a dangerous or deadly weapon, to wit: a firearm - Smith Wesson Model 3401 .22 Revolver Serial # M98818 and Walter [sic] PPK-S .380 Pistol Serial # SO10168.

Complaint marked:
NOLLE

Certificate of True Copy
October 4, 1989
by: /s/ J.D. Hardesty

DOCKET SHEET

Case Number: CR488-1196F

State of Missouri, Plaintiff,

vs.

Boucher, Gerald Victor, Defendant.

Attorney for Plaintiff: GREG KAYS

Attorney for Defendant: DEE WAMPLER

Nature of action/charge: CARRYING CONCEALED
WEAPON

Date	Documents Filed/Action Taken in Case
11/15/88	Complaint filed. Judge directs sufficient cause exists to issue warrant. GT
11/15/88	Warrant issued. Bond set @ \$25,000.00
11/21/88	Warrant returned served. GT
11/28/88	Information Card filed in CR488-1195F. GT
1/13/89	Calandered [sic] for review 1/18/89 @ 9. JH
1/18/89	Case called. Defendant appears without Counsel. Advised of rights and formally arraigned. Entered plea of not guilty. Case set for appearance with Counsel 1/30/89 at 1:30 p.m. Bond set at ____.
1/24/89	Atty. D Wampler requesting copy of complaint and docket sheet. Copies forwarded this date. JH
1/24/89	Demand for speedy trial filed. JH

DOCKET SHEET

(Continued)

- 1/30/89 Attorney Wampler does not appear -
Defendant does not appear. Cause set for
Bench trial on all misdemeanors to 3/10/89 @
1:30 p.m. Hearing on Felony will
- 2/27/89 Motion to dismiss for lack of speedy trial. JH
- 2/28/89 The motion to dismiss will be considered prior
to Preliminary hearing. The preliminary
hearing shall be set for 3/10/89. Evidence
shall be produced or cause dismissed.
Forward entry to the parties. JM
The order entered 1/30/89 is set aside. JM
- 3.10/89 Case dismissed. JH State enters Nolle
Prosequi

Certificate of True Copy

October 4, 1989

by: /s/ J.D. Hardesty